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6400

*TESTIMONY OF  
ATTORNEY GENERAL RICHARD BLUMENTHAL  
BEFORE THE HUMAN SERVICES COMMITTEE  
FEBRUARY 17, 2009*

I appreciate the opportunity to support House Bill 6400, An Act Concerning the Strengthening of Nursing Home Oversight.

Not long ago, Haven Health became a national poster child for state regulatory failure of nursing homes. Despite supposed state oversight by the Department of Social Services and the Department of Public Health, Haven Health's alleged mismanagement and misappropriation drained critical nursing home financial resources -- including taxpayer funds -- for improper private purposes.

As mega-corporations and private equity firms devour ever-increasing numbers of nursing homes, we must modernize state regulatory oversight by restricting the use of nursing home assets to fund unrelated business ventures, requiring independent audits and increased financial reporting to the state, and enhancing civil penalties and administrative investigatory powers.

There are numerous critical changes in our statutes that should be adopted to give more powers to regulators, provide independent auditing of nursing homes and authorize a court to appoint a receiver when nursing home finances are in disarray.

Specifically, the proposal:

1. requires the state to approve any transfer of ownership or control of a nursing home (section 1);
2. adds the Comptroller to the Nursing Home Advisory Committee and eliminates the two appointees from the industry. The Committee shall quarterly meet with legislative leaders on issues involving nursing home finances and oversight (section 2);
3. requires nursing homes to submit independent annual financial audits to the Commissioner of Social Services and authorizes the Commissioner of Social Services to require annual cost reports from nursing facility management services agencies or any person with a 10% ownership in such agency and quarterly financial reports from nursing homes if there is concern about the financial stability of the nursing home (section 3);

4. limits fees that a nursing home pays to a nursing home management company to operate such nursing home if the management company is related to the owner of the nursing home (section 4);
5. eliminates redundant regulation-making authority and reporting language (section 5);
6. limits lease payments of a nursing home to a property owner is related to the nursing home owner to no higher than the reasonable rate established by the Commissioner of Social Services, unless such higher rate is approved by DSS (section 6);
7. requires that any loan proceeds secured by the nursing home facility assets must be used to pay for the nursing home operations or facility improvements unless approved by the Commissioner of Social Services (section 6);
8. imposes a civil penalty of up to \$25,000 per violation for exceeding approved limits on lease payments or use of loan proceeds (section 6);
9. requires annual reporting of nursing home proof of liability insurance for negligence, property damage or medical malpractice to DSS as part of the annual cost report. DSS shall report such insurance coverage information to the Human Services Committee and the Nursing Home Advisory Committee (section 7);
10. establishes civil penalties and appointment of a temporary receiver for any nursing home property owner who fails to repair or improve the facility in order to comply with the Public Health Code (section 8);
11. requires nursing home owners to provide DSS with the identities of all individuals and entities that have a beneficial ownership in such facility and clarified the definition of beneficial ownership (section 9);
12. expands subpoena authority of the Department of Public Health and the Department of Social Services relating to oversight of nursing homes and nursing home operators (section 10);
13. authorizes DPH to seek injunctive relief to prevent the management of a nursing home by an unlicensed nursing home services agency (section 11);
14. strengthens the Commissioner of DSS's authority to deny licensure to a nursing home owner who has been the subject of sanctions in the previous 5 years (section 12);
15. broadens the authority of a court appointed receiver to control assets related to the operations of the nursing home, including a receiver for nursing home management or property owner, or related entity providing goods or services to the nursing home, defines severe financial distress' under which a receivership may be established and

allows DSS to provide further articulation of criteria that defines severe financial distress (section 13);

16. limits a court from authorizing a receiver to pay rental cost and other property related costs beyond the DSS fair rental allowance (section 14);
17. broadens the court's discretion in selecting a receiver for a nursing home and clarifying that state advance payment debts after a receiver is appointed constitutes a priority debt (section 15);
18. tightens DPH licensing requirements for nursing home management services by allowing the Commissioner to take into consideration the nursing home management company's experience in other states as part of the licensing process, including requiring a certificate of good standing from the regulating entity in states in which the management company operates, and imposes civil penalties of up to \$5,000 per class A and class B violations and civil penalties of up to \$1,000 per day for providing nursing home management services without a certificate (section 16).

I urge the committee's favorable consideration of this amendment. I look forward to working with the committee on this issue.